27 June 2025

Intergovernmental Negotiating Committee on the
UN Framework Convention on International Tax Cooperation
Workstream III
Co-Leads' Draft Outline of Issues Overview and Scope

I. Introduction

1. Workstream III of INC/Tax is charged with developing the second early protocol, on the "prevention and resolution of tax disputes"[1] (the "protocol"). Under the Terms of Reference (ToR)[2] adopted by the General Assembly in December 2024, the text of the draft protocol will be submitted, along with the draft text of the UN Framework Convention on International Tax Cooperation and the draft text of the first protocol on the "taxation of income derived from the provision of cross-border services in an increasingly digitalized and globalized economy" to the UN General Assembly for its consideration in the first quarter of its 82nd session in the second half of 2027.

II. Procedural Background

2. At its organizational session, INC/Tax considered four possible topics for the second early protocol, based on a note by the Secretariat, A/AC.298/CRP.4. The four topics were:

a. taxation of the digitalized economy;

b. measures against tax-related illicit financial flows;

c. prevention and resolution of tax disputes; and

d. addressing tax evasion and avoidance by high-net worth individuals and ensuring their effective taxation in relevant Member States.

3. That note describes the proposal for work on prevention and resolution of tax disputes as follows:

> As business models and value chains have become increasingly globalized and dispersed and international tax rules increasingly complicated, cross-border tax disputes become increasingly frequent and difficult to resolve. The effective and efficient prevention and resolution of cross-border tax disputes has thus emerged as a pressing issue for governments and taxpayers alike, promising to reduce cost and increasing legal certainty for cross-border business activity and investments. Such tax disputes can arise from the interpretation or application of the international tax provisions of domestic law or tax treaties. In addition, the UN Framework Convention and the early protocols, like every tax agreement, may themselves become subject to tax disputes.
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> There are several limitations in bilateral treaty dispute prevention and resolution mechanisms, some of which are addressed in the Handbook on Dispute Avoidance

[1] See A/AC.298/CRP.5.
[2] See A/AC.298/2.

and Resolution developed by the UN Committee of Experts on Cooperation in International Tax Matters.[3] The tax treaty rules are complemented by a patchwork of additional administrative and legal tools outside of the tax treaty network, including the use of mandatory binding arbitration under international investment agreements to address tax-related disputes. Again, member States have different views as to the inclusiveness, effectiveness, and fairness of these approaches. Hence, a more multilateral approach to these issues could help stabilize and bring greater certainty and fairness to the international tax environment. Generally, avoiding tax disputes from arising may alleviate the pressure on dispute settlement mechanisms.

Under a protocol on the prevention and resolution of tax disputes, existing tools could be strengthened, and new tools could be tested. Potential measures on avoiding disputes may encompass, for example, strengthening coordinated advance agreements and administrative assurance as well as increasing the efficacy of cross-border cooperation in respect of joint tax audits. As to cross-border tax disputes, the legal basis both within and outside the current tax treaty network may be strengthened. This may include mutual agreement procedures, confidentiality and secure document exchange, arbitration, and non-binding dispute resolution. However, any measure will have to balance Member States' interest in effective and efficient resolution of tax disputes with the imperatives of and concerns for national sovereignty. Furthermore, the INC-Tax may decide that the institutional provisions of the Framework Convention should encompass mechanisms for the prevention and/or resolution of disputes arising from the implementation of the framework convention. The Framework Convention may also cover aspects of prevention and/or resolution of cross-border tax disputes. Developing a protocol on the prevention and/or resolution of tax disputes may thus need design decision by the INC-Tax on the approach taken as well as careful coordination with provision in the main convention.

4. As noted in paragraph 3, Member States have different views regarding the various mechanisms mentioned in that short description of the issues. Accordingly, although the INC/Tax decided on dispute prevention and resolution as the topic for the second early protocol, that decision does not suggest any particular approach or scope to be taken in the protocol. The workstream therefore began its review of the topic *de novo*, with the task of providing an overview of the issue and then, after the August 2025 Sessions, proposing possible options for measures.

5. This note follows discussions within Workstream III held in multiple meetings under the co-leadership of Marlene Nembhard-Parker (Jamaica) and Michael Braun (Germany). Its issuance is in accordance with the work plan for Workstream III, which calls for the development of a note providing an outline of the issue overview and scope of the protocol ahead of the INC's August 2025 Sessions. The purpose of this note is to assist in obtaining targeted input from multi-stakeholders in the preceding consultations and to inform discussions of the INC Plenary, which is expected to provide direction on the scope of the protocol at those Sessions.

[3] See United Nations, *Handbook on the Avoidance and Resolution of Tax Disputes*, 2021, ISBN: 9789212591896.

6. The ToR refer to disputes three times. In addition to references to a possible early protocol in paragraph 16, paragraph 10 provides that the Framework Convention should include a commitment on "the effective prevention and resolution of tax disputes" and "dispute settlement mechanisms" are mentioned as an "other element" in paragraph 13. Drafting of these provisions are within the purview of Workstream I, although the work plans of both provide for coordination between Workstream I and Workstream III to ensure legal and technical alignment between both instruments. Participants in both workstreams were kept informed of the relevant discussions in the other workstream and, in some instances, participated in both.

III. Issues Overview

a. Reasons for work on dispute prevention and resolution

7. Litigation of tax disputes frequently is time-consuming and resource-intensive for both taxpayers and tax authorities. Final resolution of a cross-border tax dispute through domestic courts may take years, and there is no guarantee that a court decision will be accepted by any other countries whose tax revenues are at stake, meaning that the risk of double taxation may persist. It is also often the case that tax authorities are at a significant disadvantage in litigation because of information asymmetries – the taxpayer, either an individual or a corporation, knows its own situation and has access to information that a tax authority does not. The tools available to tax authorities in connection with fact-finding vary with the procedural rules and their application in different jurisdictions, as well as with the legal basis available for intergovernmental administrative cooperation. While these conditions have existed for decades,[4] the urgency to address them has increased as individual taxpayers are more mobile, business structures and supply chains touch more jurisdictions, and underlying transactions become more complex.

8. For these reasons, tax authorities over time have developed various mechanisms aimed at either preventing tax disputes from arising in the first place or resolving them without resorting to court proceedings. Successful use of such mechanisms can be in the best interests of both taxpayers and tax authorities by conserving resources. However, this is the case only if the processes are fair, independent, accessible, and effective in resolving disputes in a timely manner for both taxpayers and the tax authorities involved.

9. The ultimate goal of work on effective prevention and resolution of tax disputes is to increase domestic resource mobilization by increasing cross-border trade and investment. An effective system can do so by providing legal certainty and lessening compliance burdens.

b. Cross-cutting challenges

10. There was a strong convergence of views among participants in the workstream on the types of **cross-border** disputes that are most common. The disputes were said to mainly concern corporations, but also arise with individual taxpayers. Many concern transfer pricing, permanent establishments, and issues regarding the residence of taxpayers, while others involve the treatment of digital services, other tax treaty aspects and the taxation of capital gains on the disposal of assets,

[4] In fact, calls from business to provide for tax dispute resolution mechanisms date back to the same period in which tax treaties were being developed.

including offshore indirect transfers. In these areas, disputes could arise either (a) because of the ambiguity or complexity of the relevant substantive and procedural rules, (b) because the parties have different interpretations or applications of those rules or the facts or (c) because there is no treaty between the two countries so there is no common set of rules to apply, with each country applying its domestic rules. Some participants highlighted their experience with multinational enterprises ("MNEs"), drawing attention to international transactions related to payments made for the provision of intra-group services that are stated to be 'low-value adding'. Often these services are found to lack commercial substance and the payments made do not appear to adhere to the arm's length principle.

11. In particular, in connection with transfer pricing, a number of participants cite lack of relevant information as a significant problem. There is no publicly available database that governments can access to identify and examine comparable transactions. Participants described difficulties in using commercial databases to establish comparable transactions, either because of their cost or finding that the transactions in such databases were not appropriate for use in their circumstances, due to a lack of relevance or because the data was not up to date. The lack of access to country-by-country reports, gaps in the reports and their limited scope also are a problem for some countries. In addition, some participants described concerns as to the credibility of the information provided in order to ascertain costs and apply allocation keys in cost contribution arrangements. These information problems may be compounded when many years have passed between the time a transaction took place and when it is being examined.

12. Some participants emphasized the potential benefits of systematically embedding digital solutions, such as online platforms for administrative support, throughout dispute prevention and resolution processes, recognizing that digitalization could significantly streamline such processes and improve efficiency and accessibility.

13. In the view of some participants, subparagraph (f) of paragraph 10 of the ToR is not limited to cross-border transactions. In their views, taxpayers are equally in need of tax certainty with respect to purely domestic tax issues (*i.e.*, those that do not involve transactions that take place cross-border). However, there was no similar convergence of views regarding the most common issues that arise in the purely domestic context.

c. Prevention of tax disputes

14. Dispute prevention traditionally has been a matter primarily of domestic law. It starts by ensuring that taxpayers understand their tax obligations by providing clearly drafted legislation. This is facilitated by clearly establishing tax policy goals before drafting tax legislation and then, after legislation is enacted, assisting taxpayers in complying by providing easily accessible supplementary guidance. This requires significant investment in capacity development, including human and technological resources, but such capacity development should reap substantial benefits in terms of more efficient tax administration.

15. The goal of tax administration should be to ensure that the taxpayer pays the correct amount of tax, no more and no less, and at the right time. The structure of the tax administration can help to further that goal. Many countries provide, under their domestic law, various types of internal

appeal or review processes that allow for a "second look" by someone other than the auditor before an adjustment is made. Some countries have found that adopting a practice of "cooperative compliance" with large taxpayers, which involves constant communication with the goal of resolving issues before a return is even filed, is a good use of scarce resources.

16. Another common approach to preventing tax disputes is the development of programs for Advance Pricing Agreements ("APAs"), which generally apply to transfer pricing and income allocation issues. APAs allow the taxpayer and tax authorities to discuss complex factual and legal transfer-pricing questions in a cooperative manner. Ideally, questions are settled before returns are filed, and countries may allow "roll-backs" to tax years for which the statute of limitations has not run. APAs address the constant problem of asymmetry of information between the taxpayer and tax authorities. Taxpayers who voluntarily apply for APAs can be required to provide information regarding their business operations as part of the process. From the tax authorities' point of view, this reduces their risk as they otherwise would have to try to get that information during the course of an audit. From the taxpayer's point of view, an APA is desirable because it can provide certainty for years regarding how its operations will be taxed. Bilateral or multilateral APAs can further enhance legal certainty by ensuring consistent treatment across jurisdictions, avoiding the problems associated with unilateral determinations. A formal process with clear procedural rules and strict documentation requirements—including risk analyses—can be particularly helpful in providing transparency and predictability for both sides. Similar benefits might be achieved through advance agreements on other issues, but those are less common.

17. APA programs are clearly more common in developed countries, with some developing countries noting that they do not currently have a legal framework to allow for such agreements. Even those developing countries that have adopted such programs, or that are in the process of doing so, noted that the resulting APAs or other rulings will, in most cases, be unilateral, either as a result of legal restrictions or the practical consideration that they do not have large tax treaty networks that would allow bilateral or multilateral APAs. They acknowledge that unilateral APAs could resolve domestic issues but also could lead to more cross-border disputes because there is no guarantee that other tax authorities would accept the results.

18. Another possible approach to dispute prevention is conducting simultaneous controls or even joint audits with tax authorities in other relevant jurisdictions to ensure consistent analysis of the facts and law. This can also be a way to build capacity in countries with less experience, as pursued, for example, under the Tax Inspectors Without Borders programme. However, these mechanisms require that there be a bilateral tax treaty, information exchange agreement or other legal instrument that allows the tax authorities to share taxpayer information and to cooperate in these specific manners.

19. Over the past decade or so, there has been increasing private sector and academic interest in the use of mediation for tax disputes. Some countries have reported positive experiences in using mediation as between taxpayers and the tax authorities to resolve domestically disputes before they go to trial. However, most participants did not have much, if any, experience with mediation, making it difficult to draw conclusions regarding its usefulness as compared, for example, to collaborative compliance which has received more positive reactions.

d. Resolution of tax disputes

20. With respect to the cross-border issues that have been identified as the most pressing concerns, the primary legal framework providing substantive rules for the allocation of taxing rights is the network of over 3000 bilateral tax treaties. It is important to remember that, while this workstream process addresses situations where disputes arise, the substantive rules included in these agreements provide legal certainty for millions of transactions that take place every day, facilitating cross-border trade and investment.

21. In addition to the substantive rules, tax treaties provide for government-to-government resolution of disputes pursuant to the Mutual Agreement Procedure ("MAP"). Under this process, taxpayers may bring to the attention of the "competent authorities"[5] taxation not in accordance with the rules of the treaty. If a competent authority agrees that there is taxation not in accordance with the convention but cannot unilaterally resolve the case, the relevant competent authorities are to endeavour to resolve the case through a MAP. Under the model conventions and many tax treaties, the competent authorities may also resolve cases of double taxation not addressed in the tax treaty.

22. Some of the most frequent concerns raised by taxpayers regarding the MAP are the fact that the competent authorities are not required to reach an agreement and the length of time it takes to conclude an agreement. They also express concerns about access to MAP. Some countries describe being burdened by the absolute number of open MAP cases (close to 6500 at the beginning of 2023 but declining to just over 6000 at the end).[6] In fact, the size of the inventory may suggest that taxpayers continue to believe that the MAP provides a useful approach to resolving potential cases of double taxation. While some participants in the workstream said that taxpayers prefer domestic court proceedings in their countries because the MAP does not require the competent authorities to reach a resolution, others noted that the MAP is the only way to ensure that the tax authorities of the state of residence will relieve double taxation.

23. OECD statistics[7] regarding the MAP show that taxpayers received either full or partial relief, whether under the treaty or by domestic remedy, in approximately 75% of cases in 2023. Moreover, while a commonly-stated goal is to resolve disputes in under 24 months, the average time to completion of transfer pricing cases was 32.01 months and of other cases was 23.36.[8] This longer period likely reflects the relative complexity of transfer pricing cases. At the beginning of 2023, the inventory included 1042 cases that had been received prior to 2016 or the year in which a relevant party had joined the OECD/G20 Inclusive Framework on BEPs (the "IF"). Of these, 213 were closed in 2023, leaving an inventory of older cases of 813. (One indication of the effect of these older cases on the statistics is that the average time to complete a bilateral MAP with

[5] Under the UN Model Tax Convention, the case must be brought to the competent authority of the country in which the taxpayer is are a resident (or in the case of the non-discrimination, a national) while, under the OECD Model, the case can be brought to either competent authority.

[6] https://www.oecd.org/en/data/datasets/mutual-agreement-procedure-statistics.html. The burden is not spread equally, with some countries having substantial inventories while others have only a few.

[7] The OECD statistics include all members that joined the Inclusive Framework prior to 2024.

[8] The 2023 statistics may have been affected by the inability of competent authorities to meet in person during the pandemic.

respect to post-2015 cases was 29.46 months for transfer pricing cases and 23.04 months for other cases.) At the same time, 2388 newer cases, received after 2016 or the year in which relevant parties joined the IF, were closed, so that the inventory of such cases declined slightly from 5413 at the beginning of 2023 to 5362 at the end. The statistics include MAP cases where at least one of the parties is a member of the IF. However, a number of IF members indicated that they have not been involved in a MAP case.

24. Many developed countries described the importance of mandatory arbitration as a way to resolve cross-border tax disputes.[9] They noted that the inclusion of such a provision does not result in many actual arbitrations; rather, it creates an added incentive for the competent authorities to resolve cases during MAP in order to avoid arbitration. Developing countries are generally more wary of such provisions. They may have had negative experiences with investor-state arbitration under bilateral investment or other agreements. Some countries may be concerned that their relative lack of experience in the resolution of tax disputes will put them at a disadvantage in arbitration. Another concern was that the arbitrators may not rely on principles that are ascertainable and known before the arbitration is launched. Some countries seemed open to the idea of exploring ways in which to structure arbitration (for example, determining the composition of panels, so as to enhance transparency, and by providing institutional support mechanisms to ensure a level playing field and facilitate impartial outcomes).

25. At the same time, other countries rejected arbitration entirely, noting that constitutional limits prevent them from settling tax disputes through arbitration. The workstream considered the possibility that mediation of tax disputes might be useful as a substitute with respect to cases involving countries that cannot agree to arbitration, but would have to learn more about whether mediation has been used in government-to-government dispute resolution and, if so, what procedures had been adopted in such cases.

26. While the MAP process, with or without arbitration, resolves many disputes that arise under tax treaties, many countries have limited tax treaty networks but a large amount of cross-border trade and investment. As a result, many of their cross-border disputes are not governed by tax treaties, leaving them without an intergovernmentally-agreed mechanism to resolve any disputes that may arise. In almost every meeting, developing countries returned to this fundamental problem. They encouraged the workstream to consider using the protocol to provide a legal basis for resolving such disputes, at least when the domestic law of each country is sufficiently similar (*e.g.*, when each country uses the arm's length method with respect to transfer pricing). Several countries refused to adopt such an approach, with some stating that they are not permitted to deviate from their domestic law unless a treaty sets out the substantive basis for agreement.

27. Participants also noted that one of the potential strengths of the protocol could be to provide a basis to resolve multilateral disputes.

e. Possible Scope and Approach to the Protocol

[9] The OECD Model has included mandatory binding arbitration since 2008. The UN Model added it as an alternative in 2011.

28. Participants also differed in their views regarding the possible scope of the protocol. Several took the view that the protocol should only serve to resolve disputes arising under the Framework Convention and its protocols. These participants emphasized that the commitment under the Framework Convention should not affect existing obligations regarding resolution of tax disputes, including those that may arise under bilateral tax treaties, free trade agreements, bilateral investment agreements, the General Agreement on Tariffs and Trade, the General Agreement on Trade in Services, the Multilateral Instrument on BEPS and the European Union Tax Dispute Resolution Directive. On the other hand, at least one participant expressed the view that taxpayers already have many means of resolving disputes and indicated that the protocol could help to rationalize and provide a hierarchy for different mechanisms. As noted in paragraph 26, other countries view the protocol as an opportunity to provide a mechanism for resolving cross-border tax disputes in cases where there is no existing tax treaty relationship, while others rejected this possibility.

29. One participant noted that not every possible approach to dispute prevention and resolution is susceptible to multilateral solutions. Therefore, the workstream should consider whether some possible approaches should be addressed through the sharing of best practices rather than obligations in the protocol.

30. The protocol provides an opportunity to provide a series of mechanisms that could be used in a wide range of situations (a "universal" framework for dispute resolution). However, as not all countries would be equally interested in various provisions, the workstream discussed the concept of optionality within the protocol (noting that the decision whether to become a party to the protocol is also optional). Most countries acknowledged that achieving broad participation may require a level of optionality. If the concept of such optionality by virtue of an opt-in or opt-out to certain mechanisms is acceptable to the INC Plenary, its exact scope with respect to each provision would have to be considered as the protocol is developed.

IV. Issues for the Committee

31. As noted in paragraph 4, the purpose of this note is to provide an overview of the issues; the Workstream III work plan provides that proposed solutions are to be addressed in later notes after the August 2025 Sessions.

32. ***The Committee therefore is invited to discuss:***

(a) whether Section III describes the primary barriers to prevention and resolution of tax disputes that Member States encounter;

(b) whether the protocol should address only tax disputes involving cross-border transactions, or whether it might be appropriate to include mechanisms for the prevention or resolution of purely domestic disputes; and

(c) whether the concept of optionality with respect to mechanisms provided in the protocol is generally acceptable to the Committee (with specifics to be elaborated as the protocol is drafted).